



Legislative Bulletin.....November 15, 2007

Contents:

H.R. 3915—Amendments to the Mortgage Reform and Anti-Predatory Lending Act

H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act (sponsored by Rep. Brad Miller, D-NC), is scheduled to be considered on the House floor on Thursday, November 15, 2007, subject to a structured rule ([H.Res. 825](#)), making in order the following 18 amendments, each debatable for 10 minutes.

The rule waives all points of order against consideration of the bill, except those regarding PAYGO and earmarks, waives all points of order against the bill itself—except the PAYGO rule—and allows the Chair to postpone consideration of the legislation at any time during its consideration. The rule allows one motion to recommit with or without instructions.

Note: The summaries below are based on RSC staff review of *actual amendment text* and thus often differ significantly from what's on the Rules Committee website. For a summary of the underlying bill, see a separate RSC document released yesterday.

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AMENDMENTS MADE IN ORDER UNDER THE RULE

1. Frank (D-MA)/ Bachus (R-AL). Highlights of this amendment are as follows:

- Removes the requirement that registered loan originators must submit an independent credit report and requires that they give the registry system created in the bill permission to obtain information on any legal proceeding in which the originator was involved.
- Requires that the registry system coordinate with the federal banking agencies, through the Financial Institutions Examination Council, concerning the functionality of the registry and data requirements for loan originators.
- Includes the Chairman of the State Liaison Committee to the Financial Institutions Examination Council in the regulation-making process for the federal duty of care.
- Clarifies that the prohibition on steering consumers in to loans that provide no net tangible benefit applies to refinancing.
- Allows consumers to sue for a cure—but not a loan rescission—from assignees or securitizers if creditors or other assignees cease to exist or go bankrupt.
- Clarifies that the prohibition on single premium credit insurance does not apply to unemployment insurance under certain circumstances.

- Changes the restrictions on negative amortization mortgages to apply to all borrowers (not just first-time borrowers, as under the base bill), yet switches the related counseling requirement to apply to first-time borrowers only.
- Clarifies that states cannot use or adopt state laws against securitizers or assignees for violations of federal standards or to impose remedies outside of the federal remedy established in the bill, and that actions for fraud, misrepresentation, deception, false advertising, or enforcement of civil rights laws are not preempted by this legislation.
- Requires that monthly statements for mortgages include standardized disclosure statements regarding:
 - the principal obligation;
 - the interest rate currently in effect;
 - when the interest rate may reset or adjust;
 - prepayment fees that could be charged;
 - late payment fees that could be charged;
 - a phone number and email address for obtaining more information on his or her mortgage; and
 - such other information as decided by regulation.
- Makes the 8%-yield HOEPA trigger 10% for dwellings that are personal property in a transaction of less than \$50,000, and strikes the 8%-fee's HOEPA trigger exception when the involved dwelling is personal property.
- Delays the effective date of the high-cost mortgage (HOEPA) section by six months.
- Makes a variety of technical and clarifying changes.

2. *Kanjorski (D-PA)/Biggert (R-IL)/Capito (R-WV)/Hodes (D-NH)/Moore (D-WI)*. The amendment is substantively similar to H.R. 3837 (The Escrow, Appraisal, and Mortgage Servicing Improvements Act). Highlights of the amendment are as follows:

- Requires creditors, when proving a subprime mortgage (not a home equity loan or reverse mortgage) to a first-time homebuyer for his or her principal residence, to create an escrow or impound account for at least five years for the payment of taxes and hazard insurance—as well as flood insurance, mortgage insurance, ground rents, and/or any other required periodic payments or premiums related to the loan. In most cases, the granting of the home sale or loan could not be conditioned on the availability of such an account.
- Requires creditors to disclose to consumers a variety of information regarding the escrow accounts at least three days before consummation of the mortgage.
- Requires that creditors, when borrowers choose not to have, or to terminate, escrow accounts to send notice to such borrowers about the implications for not having such an account.
- Prohibits servicers of federally related mortgages from doing such things as carrying hazard insurance on a property when the borrower has none, charging fees for responding to “valid qualified written requests,” failing to take “timely action” to respond to requests to correct errors, and failing to provide within ten days the information about the owner assignee of a loan (upon request).
- Requires “prompt” (defined in amendment) crediting of payments; responses to payoff balances; and refunds of escrow accounts upon loan payoff.
- Directs the HUD Secretary, in consultation with the federal banking agencies and the Federal Trade Commission, to study and report to Congress on mortgage servicing fraud.
- Further amends the Truth in Lending Act to:

- require repayment analyses to include escrow payments;
 - include a written property appraisal from the creditor as a prerequisite to granting a mortgage (with requirements for disclosure to the consumer and \$2,000 liability for the creditor for willfully failing to provide such appraisal);
 - prohibit “unfair and deceptive” practices (defined in the amendment) relating to consumer credit transactions secured by the principal dwelling, especially in property appraisals (punishable by up to \$20,000 fines per day for multiple violations); and
 - require a mortgage originator to make available to the credit applicant all appraisal valuation reports at least three days prior to the transaction closing date.
- Prohibits certain interested parties in a real estate transaction involving an appraisal from engaging in specified practices to improperly influence a real estate appraisal in connection with a mortgage loan.
 - Requires the Comptroller General to study and report to Congress on possible improvements in the appraisal process and in state compliance programs.

3. *Maloney (D-NY)*. Requires a borrower to receive the option of a mortgage without a prepayment penalty, if they are first offered a mortgage with a prepayment penalty. The maximum time for a prepayment penalty would be three years, and the maximum prepayment amount would be 3% of the loan for the first year, 2% for the second year, and 1% for the third year. After three years, no prepayment penalty could be imposed.

4. *Watt (D-NC)/Miller (D-NC)*. Makes loan originators liable for actual damages, if greater than the underlying bill’s current ceiling of three times the total amount of direct and indirect compensation or gain accruing to the mortgage originator plus consumer costs of the lawsuit.

5. *Watt (D-NC)/Miller (D-NC)*. Requires an assignee or securitizer to have certain policies/procedures against buying subprime loans AND to cure the loan to avoid being liable for loan rescissions. (In the underlying bill, the “and” is an “or.”)

6. *Watt (D-NC)/Miller (D-NC)*. Changes the provision in the underlying bill allowing challenges to the presumption that a loan has met the two main tests of the bill (“ability to repay” and “net tangible benefit”) so that such a presumption could be challenged for all mortgages that allow a borrower to defer payment of principal or interest.

7. *Hensarling (R-TX)*. Removes the civil liability of a creditor, assignee, or securitizer, as well as cancels the right of loan rescission for a borrower, when a borrower knowingly lied on his or her mortgage loan application.

8. *Watt (D-NC)/Miller (D-NC)*. Second-degree amendment to the Hensarling amendment above. Adds that the borrower must have had “actual knowledge of” the false information provided for the liability exemption to take effect.

9. *Meeks (D-NY)*. Provides that the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer educational courses for pre-licensure or continuing education for mortgage originators. In approving courses under this bill, the Nationwide Mortgage Licensing System and Registry would have to apply “reasonable” (not defined) standards in the review and approval of courses.

10. Putnam (R-FL). Directs the Comptroller General to conduct a study and report to Congress on the various effects on different aspects of the home-credit market that the enactment of this bill would have on the availability and affordability of credit for homebuyers and mortgage lending.

11. Brown-Waite (R-FL). Excludes loans insured by the Federal Housing Administration from being challenged as to its meeting of the “ability to repay” and “net tangible benefit” tests under the bill. According to the amendment sponsor, foreclosure rates for properties that the Federal Housing Administration insures have stayed somewhat constant throughout the last six years, experiencing less than a one-percentage-point fluctuation during that period.

12. Garrett (R-NJ). Strikes the section in the underlying bill that would allow the presumption that certain loans (“qualified safe harbor mortgages”) meet the “ability to repay” and “net tangible benefit” tests to be challenged.

13. Miller (D-NC)/Frank (D-MA)/Watt (D-NC). Allows regulators to fine mortgage originators, assignees, and securitizers, who have a “pattern or practice” of violating the minimum standards for loans established in the bill, not less than \$25,000 per loan plus \$1 million (in addition to any other penalties available under current law or this legislation). Proceeds would be held in trust in the Consumers Rescission and Cure Remedial Fund of the U.S. Treasury for the benefit of borrowers with mortgages originated in violation of the minimum standards or who are eligible for cure or rescission but have no party against whom to seek such remedies.

14. Green, Al (D-TX). Requires that the educational requirements throughout the bill include lessons on fraud, consumer protection, and fair lending issues.

15. McHenry (R-NC). Strikes all of Title III (“High-Cost Mortgages”) from the bill. This title would lower the trigger for—and thus make less desirable to offer—certain mortgages under the Home Ownership and Equity Protection Act (HOEPA) of 1994. The amendment sponsor cites the Comptroller of the Currency, John Dugan who just last month said, “It is fair to say that in the past, HOEPA loans were viewed as so extreme that few institutions provided HOEPA loans... because it was such a rigorous and, what’s the word, a scarlet letter of sorts that people wouldn’t make the loans. So when you look at our home loan registry, for example, you don’t find many HOEPA loans anymore.” Therefore, the amendment sponsor argues, by deeming more loans as HOEPA loans, it will reduce the overall availability of mortgages nationwide.

16. Price (R-GA). Exempts prime loans from the provisions of the bill.

17. Van Hollen (D-MD). Requires that, in the case of a residential mortgage loan, actual closing costs could not be more than 110% of the estimate of such closing costs disclosed to the consumer before the closing.

18. Sutton (D-OH). Requires loan creditors or servicers to provide a written notice to consumers with hybrid adjustable rate mortgages (mortgages with a fixed interest rate for an introductory period that adjust or resets to a variable interest rate after such period) six-to-seven months before their interest rates are due to reset. This notice would state the new interest rate, an explanation of how the new interest rate would be determined, the creditor’s or servicer’s best estimate of the

monthly payment that will apply after the reset, a list of alternatives consumers may pursue before the date of adjustment or reset, contact information for local HUD-approved housing counseling agencies, and contact information for the state housing finance authority.

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